

IC 24-2

**ARTICLE 2. TRADEMARKS, TRADE NAMES, AND
TRADE SECRETS**

IC 24-2-1

Chapter 1. Trademark Act

IC 24-2-1-1

Short title

Sec. 1. This chapter shall be known as and may be cited as The Indiana Trademark Act.

(Formerly: Acts 1955, c.174, s.1.) As amended by P.L.152-1986, SEC.21.

IC 24-2-1-2

Definitions

Sec. 2. As used in this chapter:

(a) The term "trademark" means any word, name, symbol, or device or any combination thereof adopted and used by a person to identify goods or services made, sold, or rendered by him and to distinguish them from goods or services made, sold, or rendered by others.

(b) The term "person" means any individual, firm, partnership, corporation, limited liability company, association, union of workingmen, or other organization.

(c) The term "applicant" embraces the person filing an application for registration of a trademark under this chapter, his legal representatives, successors, or assigns.

(d) The term "registrant" embraces the person to whom the registration of a trademark under this chapter is issued, his legal representatives, successors, or assigns.

(e) For the purposes of this chapter, a trademark shall be deemed to be "used" in this state when it is placed in any manner on the goods or their containers or on the tags or labels affixed thereto, or when it is used to identify the services of one person and distinguish them from the services of others, and such goods or services are sold, otherwise distributed, or rendered in this state.

(Formerly: Acts 1955, c.174, s.2; Acts 1959, c.256, s.1.) As amended by P.L.152-1986, SEC.22; P.L.8-1993, SEC.338.

IC 24-2-1-3

Registerability

Sec. 3. A trademark by which the goods or services of any applicant for registration may be distinguished from the goods or services of others shall not be registered if it:

(a) consists of or comprises immoral, deceptive, or scandalous matter;

(b) consists of or comprises matter which may disparage or falsely suggest a connection with persons living or dead,

institutions, beliefs, or national symbols, or bring them into contempt or disrepute;

(c) consists of or comprises the flag or coat of arms or other insignia of the United States, or of any state or municipality, or of the United Nations, or of any foreign nation, or any simulation thereof;

(d) consists of or comprises the name, signature, or portrait of any living individual, except with his written consent;

(e) consists of a mark which:

(1) when applied to the goods or services of the applicant, is merely descriptive or deceptively misdescriptive of them;

(2) when applied to the goods or services of the applicant is primarily geographically descriptive or deceptively misdescriptive of them; or

(3) is primarily merely a surname.

Provided, however, that nothing in this subdivision shall prevent the registration of a mark used in this state by the applicant which has become distinctive of the applicant's goods or services. The secretary of state may accept as evidence that the mark has become distinctive, as applied to the applicant's goods or services, proof of substantially exclusive and continuous use thereof as a mark by the applicant in this state or elsewhere for the five (5) years next preceding the date of the filing of the application for registration; or

(f) consists of or comprises a trademark which so resembles a trademark registered in this state or deemed registered in this state, as provided for by section 16 of this chapter, as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive, unless there shall be filed with the secretary of state the written consent of the registrant of such trademark, signed and verified under oath by the registrant or one (1) of its officers or partners.

(Formerly: Acts 1955, c.174, s.3; Acts 1959, c.256, s.2.) As amended by P.L.152-1986, SEC.23.

IC 24-2-1-4

Application for registration

Sec. 4. Subject to the limitations set forth in this chapter, any person who adopts and uses a trademark in this state may file in the office of the secretary of state, on a form to be furnished by the secretary of state, an application for registration of that trademark setting forth, but not limited to, the following information:

(a) The name and business address of the person applying for such registration, and, if a corporation, the state of incorporation.

(b) The goods or services in connection with which the mark is used and the mode or manner in which the mark is used in connection with such goods or services and the class in which such goods or services fall.

(c) The date when the trademark was first used in the United

States and the date of its first use in this state by the applicant or his predecessor in business.

(d) A statement that the applicant is the owner of the trademark and that no other person has the right to use such trademark in this state either in the identical form thereof or in such near resemblance thereto as might be calculated to deceive or to be mistaken therefor; however, this statement shall not be required if written consent is obtained in the manner provided for in section 3(f) of this chapter.

The application shall be signed and verified by the applicant or by a member of the firm or limited liability company, or an officer of the corporation or association applying. The application shall be accompanied by three (3) specimens or facsimiles of such trademark and shall contain a brief description of such trademark as it appears on such specimens or facsimiles. The application for registration shall be accompanied by a filing fee of ten dollars (\$10) payable to the secretary of state.

(Formerly: Acts 1955, c.174, s.4; Acts 1959, c.256, s.3.) As amended by P.L.152-1986, SEC.24; P.L.8-1993, SEC.339.

IC 24-2-1-5

Certificate of registration

Sec. 5. (a) Upon compliance by the applicant with the requirements of this chapter, the secretary of state shall cause a certificate of registration to be issued and delivered to the applicant. The certificate of registration shall be issued under the signature of the secretary of state and the seal of the state of Indiana, and it shall show the name and business address and, if a corporation, the state of incorporation, of the person claiming ownership of the trademark, the date claimed for the first use of the trademark in the United States and this state, the class of goods or services and a description of the goods or services on which the trademark is used, the registration date, and the term of the registration. One (1) specimen or facsimile of the trademark supplied under section 4 of this chapter shall be attached to and made a part of the certificate of registration.

(b) Any certificate of registration issued by the secretary of state under the provisions of subsection (a) or a copy thereof duly certified by the secretary of state shall be admissible in evidence as competent and sufficient proof of the registration of such trademark in any action or judicial proceedings in any court of this state.

(Formerly: Acts 1955, c.174, s.5; Acts 1959, c.256, s.4.) As amended by P.L.152-1986, SEC.25.

IC 24-2-1-6

Duration and renewal

Sec. 6. Registration of a trade-mark hereunder shall be effective for a term of ten (10) years from the date of registration and, upon application filed within six (6) months prior to the expiration of such term, on a form to be furnished by the secretary of state, the registration may be renewed for a like term. A renewal fee of ten

dollars (\$10.00), payable to the secretary of state, shall accompany the application for renewal of the registration. A trade-mark registration may be renewed for successive periods of ten (10) years in like manner.

The secretary of state shall notify the registrants of trade-marks of the necessity of renewal within the year next preceding the expiration of the ten (10) years from the date of the registration by writing to the last known address of the registrants.

(Formerly: Acts 1955, c.174, s.6.)

IC 24-2-1-7

Expiration of registration

Sec. 7. Any registration in force on March 8, 1955, shall expire March 8, 1956, unless renewed by filing an application with the secretary of state on a form furnished by him and paying the renewal fee described in section 6 of this chapter within six (6) months prior to the expiration of the registration.

(Formerly: Acts 1955, c.174, s.7.) As amended by P.L.152-1986, SEC.26.

IC 24-2-1-8

Assignment

Sec. 8. Any trademark and its registration under this chapter shall be assignable with the good will of the business in which the trademark is used, or with that part of the good will of the business connected with the use of and symbolized by the trademark. Assignment shall be by instrument in writing duly executed and shall be recorded with the secretary of state upon the payment of a fee of ten dollars (\$10) payable to the secretary of state who, upon recording of the assignment, shall issue in the name of the assignee a new certificate for the remainder of the term of the registration or of the last renewal thereof. An assignment of any registration under this chapter shall be void as against any subsequent purchaser for valuable consideration without notice unless it is recorded with the secretary of state.

(Formerly: Acts 1955, c.174, s.8.) As amended by P.L.152-1986, SEC.27.

IC 24-2-1-9

Records

Sec. 9. The secretary of state shall keep for public examination a record of all trademarks registered or renewed under this chapter.

(Formerly: Acts 1955, c.174, s.9.) As amended by P.L.152-1986, SEC.28.

IC 24-2-1-10

Cancellation

Sec. 10. The secretary of state shall cancel from the register:

- (1) after March 8, 1956, all registrations under prior statutes which have not been renewed in accordance with this chapter;

- (2) any registration concerning which the secretary of state shall receive a voluntary request for cancellation thereof from the registrant or the assignee of record;
- (3) all registrations granted under this chapter and not renewed in accordance with the provisions of this chapter;
- (4) any registration concerning which a court of competent jurisdiction shall find:
 - (A) that the registered trademark has been abandoned;
 - (B) that the registrant is not the owner of the trademark;
 - (C) that the registration was granted improperly; or
 - (D) that the registration was obtained fraudulently; and
- (5) when a court of competent jurisdiction shall order cancellation of a registration on any ground.

(Formerly: Acts 1955, c.174, s.10.) As amended by P.L.152-1986, SEC.29.

IC 24-2-1-11

Classification

Sec. 11. (a) The following general classes of goods and services are established for convenience of administration of this chapter, but not to limit or extend the applicant's or registrant's rights, and a single application for registration of a trademark may include any or all goods or services upon or in connection with which the trademark is actually being used comprised in a single class, but in no event shall a single application include goods or services upon or in connection with which the trademark is being used which fall within different classes of goods or services.

(b) The said classes are as follows:

- (1) Raw or partly prepared materials.
- (2) Receptacles.
- (3) Baggage, animal equipments, portfolio, and pocketbooks.
- (4) Abrasives and polishing materials.
- (5) Adhesives.
- (6) Chemicals and chemical compositions.
- (7) Cordage.
- (8) Smokers' articles, not including tobacco products.
- (9) Explosives, firearms, equipments, and projectiles.
- (10) Fertilizers.
- (11) Inks and inking materials.
- (12) Construction materials.
- (13) Hardware and plumbing and steam-fitting supplies.
- (14) Metals and metal castings and forgings.
- (15) Oils and greases.
- (16) Paints and painters' materials.
- (17) Tobacco products.
- (18) Medicines and pharmaceutical preparations.
- (19) Vehicles.
- (20) Linoleum and oiled cloth.
- (21) Electrical apparatus, machines, and supplies.
- (22) Games, toys, and sporting goods.

- (23) Cutlery, machinery, and tools, and parts thereof.
- (24) Laundry appliances and machines.
- (25) Locks and safes.
- (26) Measuring and scientific appliances.
- (27) Horological instruments.
- (28) Jewelry and precious-metal ware.
- (29) Brooms, brushes, and dusters.
- (30) Crockery, earthenware, and porcelain.
- (31) Filters and refrigerators.
- (32) Furniture and upholstery.
- (33) Glassware.
- (34) Heating, lighting, and ventilating apparatus.
- (35) Belting, hose, machinery packing, and nonmetallic tires.
- (36) Musical instruments and supplies.
- (37) Paper and stationery.
- (38) Prints and publications.
- (39) Clothing.
- (40) Fancy goods, furnishings, and notions.
- (41) Canes, parasols, and umbrellas.
- (42) Knitted, netted and textile fabrics, and substitutes thereof.
- (43) Thread and yarn.
- (44) Dental, medical, and surgical appliances.
- (45) Soft drinks and carbonated waters.
- (46) Foods and ingredients of foods.
- (47) Wines.
- (48) Malt beverages and liquors.
- (49) Distilled alcoholic liquors.
- (50) Cosmetics and toilet preparations.
- (51) Detergents and soaps.
- (52) Merchandise not otherwise classified.
- (53) Miscellaneous.
- (54) Advertising and business.
- (55) Insurance and financial.
- (56) Construction and repair.
- (57) Communication.
- (58) Transportation and storage.
- (59) Material treatment.
- (60) Education and entertainment.

(Formerly: Acts 1955, c.174, s.11; Acts 1959, c.256, s.5.) As amended by P.L.152-1986, SEC.30.

IC 24-2-1-12

Damages for fraudulent registration

Sec. 12. Any person who shall for himself, or on behalf of any other person, procure the filing or registration of any trade-mark in the office of secretary of state under the provisions hereof, by knowingly making any false or fraudulent representation or declaration in writing, or by any other fraudulent means, shall be liable to pay all damages sustained in consequence of such filing or registration, to be recovered by or on behalf of the party injured

thereby in any court of competent jurisdiction.
(Formerly: Acts 1955, c.174, s.12.)

IC 24-2-1-13

Infringement

Sec. 13. Subject to the provisions of section 15 of this chapter, any person who shall:

- (a) use, without the consent of the registrant, any reproduction, counterfeit, copy, or colorable imitation of a trademark registered under this chapter in connection with the sale, offering for sale, or advertising of any goods or services on or in connection with which such use is likely to cause confusion or mistake or to deceive as to the source or origin of such goods or services; or
- (b) reproduce, counterfeit, copy, or colorably imitate any such trademark and apply such reproduction, counterfeit, copy, or colorable imitation to labels, signs, prints, packages, wrappers, receptacles, or advertisements intended to be used upon or in conjunction with the sale or other distribution in this state of such goods or services;

shall be liable to a civil action by the owner of such registered trademark for any or all of the remedies provided in section 14 of this chapter, except that under subdivision (b) the registrant shall not be entitled to recover profits or damages unless the acts have been committed with knowledge that such trademark is intended to be used to cause confusion or mistake or to deceive.

(Formerly: Acts 1955, c.174, s.13; Acts 1959, c.256, s.6.) As amended by P.L.152-1986, SEC.31.

IC 24-2-1-14

Remedies

Sec. 14. (a) Any owner of a trademark registered under this chapter may proceed by suit to enjoin the manufacture, use, display, or sale of any counterfeits or imitations thereof, and any court of competent jurisdiction may grant injunctions to restrain such manufacture, use, display, or sale as may be by the said court deemed just and reasonable, and may require the defendant to pay to such owner all profits derived from and/or all damages suffered by reason of such wrongful manufacture, use, display, or sale; and such court may also order that any such counterfeits or imitations in the possession or under the control of any defendant in such case be delivered to an officer of the court or to the complainant to be destroyed.

(b) The enumeration of any right or remedy in this chapter shall not affect a registrant's right to prosecute under any penal law of this state.

(Formerly: Acts 1955, c.174, s.14.) As amended by P.L.152-1986, SEC.32.

IC 24-2-1-15

Common law rights

Sec. 15. Nothing herein shall adversely affect the rights or the enforcement of rights in trade-marks acquired in good faith at any time at common law.

(Formerly: Acts 1955, c.174, s.15.)

IC 24-2-1-16**Effect of repeal upon pending proceedings and prior marks**

Sec. 16. Any proceedings, civil or criminal, which are pending on March 8, 1955, under Acts 1891, c.116, Acts 1893, c.40, Acts 1917, c.178, or Acts 1935, c.204 shall not be affected by their repeal by Acts 1955, c.174, s.16. All trademarks, labels, brands, stamps, names, wrappers, or other devices which are registered under any previous laws of this state on March 8, 1955, shall be deemed to be registered under this chapter, but all provisions of this chapter shall apply to said registrations as apply to registrations which shall after March 8, 1955, be registered under this chapter.

(Formerly: Acts 1955, c.174, s.17.) As amended by P.L.152-1986, SEC.33.